

§ 58-10-12. Conversion plan requirements.

(a) As used in this section:

- (1) "Closed block" means an allocation of assets for a defined group of in-force policies which, together with the premiums of those policies and related investment earnings, are expected to be sufficient to maintain the payments of guaranteed benefits, certain expenses, and continuation of the current dividend scale on the closed block, if experience does not change.
- (2) "Converting mutual" means a domestic mutual insurance company that has adopted a plan of conversion and an amendment to its articles of incorporation under this section that will, upon consummation, result in the domestic mutual insurance company converting into a domestic stock insurance company.
- (3) "Eligible member" means a person who:
 - a. Is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion and an amendment to the articles of incorporation; and
 - b. Continues to be a member of the converting mutual on the effective date of the conversion.
- (4) "Former mutual" means the domestic stock insurance company resulting from the conversion of a converting mutual to a stock insurance company under a plan of conversion and an amendment to its articles of incorporation under this section.
- (5) "Member" means a person that, according to the records, articles of incorporation, and bylaws of a converting mutual, is a member of the converting mutual.
- (6) "Membership interests" means:
 - a. The voting rights of members of a domestic mutual insurance company as provided by law and by the company's articles of incorporation and bylaws; and
 - b. The rights of members of a domestic mutual insurance company to receive cash, stock, or other consideration in the event of a conversion to a stock insurance company under this section or a dissolution as provided by the company's articles of incorporation and bylaws.
- (7) "Parent company" means a corporation that, upon the effective date of a conversion, owns all of the stock of the former mutual.
- (8) "Plan of conversion" means the plan of conversion described in subsection (b) of this section.

(b) The plan of conversion under G.S. 58-10-10 shall:

- (1) Describe the manner in which the proposed conversion will occur and the insurance and any other companies that will result from or be directly affected by the conversion, including the former mutual and any parent company.
- (2) Provide that the membership interests in the converting mutual will be extinguished as of the effective date of the conversion.
- (3) Require the distribution to the eligible members, upon the extinguishing of their membership interests, of aggregate consideration equal to the fair value of the converting mutual.
- (4) Describe the manner in which the fair value of the converting mutual has been or will be determined.

- (5) Describe the form or forms and amount, if known, of consideration to be distributed to the eligible members.
- (6) Specify relevant classes, categories, or groups of eligible members and describe and explain any differences in the form or forms and amount of consideration to be distributed to or among the eligible members.
- (7) Require and describe the method or formula for the fair and equitable allocation of the consideration among the eligible members.
- (8) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends, through establishment of a closed block or other method acceptable to the Commissioner.
- (9) Provide that each member and other policyholder of the converting mutual will receive notification of the address and telephone number of the converting mutual and the former mutual, if different, along with the notice of hearing as approved by the Commissioner.
- (10) Include other provisions as the converting mutual determines to be necessary.

(c) After the adoption by the board of directors of the resolution proposing the plan of conversion under G.S. 58-10-10 and the amendment to its articles of incorporation, the converting mutual shall file with the Commissioner an application for approval of the plan and amendment. The application must contain the following information, together with any additional information as the Commissioner may require:

- (1) The plan of conversion and a certificate of the secretary of the converting mutual certifying the adoption of the plan by the board of directors.
- (2) A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual, the eligible members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.
- (3) A five-year business plan and at least two years of financial forecasts of the former mutual and any parent company.
- (4) Any plans that the former mutual or any parent company may have to:
 - a. Raise additional capital through the issuance of stock or otherwise;
 - b. Sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;
 - c. Liquidate or dissolve any company or sell any material assets;
 - d. Merge or consolidate or pursue any other form of reorganization with any person; or
 - e. Make any other material change in investment policy, business, corporate structure, or management.
- (5) Any plans for a delayed distribution of consideration to eligible members or restrictions on sale or transfer of stock or other securities.
- (6) A copy of the form of trust agreement, if a distribution of consideration is to be delayed by more than six months after the effective date of the conversion.
- (7) A plan of operation for a closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members

and other policyholders with policies that provide for the distribution of policy dividends.

- (8) Copies of the amendment to the articles of incorporation proposed by the board of directors and proposed bylaws of the former mutual and copies of the existing and any proposed articles of incorporation and bylaws of any parent company.
- (9) A list of all individuals who are or have been selected to become directors or officers of the former mutual and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, and the following information concerning each individual on the list unless the information is already on file with the Commissioner:
 - a. The individual's principal occupation.
 - b. All offices and positions the individual has held in the preceding five years.
 - c. Any crime of which the individual has been convicted (other than traffic violations) in the preceding 10 years.
 - d. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven years.
 - e. Information concerning the bankruptcy of any corporation or other entity of which the individual was an officer or director during the previous seven years.
 - f. Information concerning allegations of state or federal securities law violations made against the individual that within the previous 10 years resulted in (i) a determination that the individual violated state or federal securities laws; (ii) a plea of nolo contendere; or (iii) a consent decree.
 - g. Information concerning the suspension, revocation, or other disciplinary action during the previous 10 years of any state or federal license issued to the individual.
 - h. Information as to whether the individual was refused a bond during the previous 10 years.
- (10) A fairness opinion addressed to the board of directors of the converting mutual from a qualified, independent financial adviser asserting:
 - a. That the provision of stock, cash, policy benefits, or other forms of consideration upon the extinguishing of the converting mutual's membership interests under the plan of conversion and the amendment to the articles of incorporation is fair to the eligible members, as a group, from a financial point of view; and
 - b. Whether the total consideration under sub-subdivision a. of this subdivision is equal to or greater than the surplus of the converting mutual.

The Commissioner may waive the fairness opinion in situations involving a straightforward issuance of stock to members of the former mutual.
- (11) An actuarial opinion as to the following:
 - a. The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among eligible members, consistent with this Article.
 - b. The reasonableness of the plan of operation and sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible

members and other policyholders with policies that provide for the distribution of policy dividends.

- (12) If any of the consideration to be distributed to eligible members consists of stock or other securities, subject to the limitations of G.S. 58-10-10(b)(6), a description of the plans made by the former mutual or its parent company to assure that an active public trading market for the stock or other securities will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort.
- (13) Any additional information, documents, or materials that the converting mutual determines to be necessary.

(d) Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. However, the period of time shall not exceed six months unless otherwise approved by the Commissioner.

(e) Except as specifically provided in a plan of conversion, for five years following the effective date of the conversion, no person or persons acting in concert (other than the former mutual, any parent company, or any employee benefit plans or trusts sponsored by the former mutual or a parent company) shall directly or indirectly acquire, or agree or offer to acquire, in any manner the beneficial ownership of five percent (5%) or more of the outstanding shares of any class of a voting security of the former mutual or any parent company without the prior approval of the Commissioner of a statement filed by that person with the Commissioner. The statement shall contain the information required by G.S. 58-19-15(b) and any other information required by the Commissioner. The Commissioner shall not approve an acquisition under this subsection unless the Commissioner finds that:

- (1) None of the conditions set forth in G.S. 58-19-15(d) will exist.
 - (2) The acquisition will not impede the plan of conversion or the amendment to the articles of incorporation as approved by the members and the Commissioner.
 - (3) The boards of directors of the former mutual and any parent company have approved the acquisition.
 - (4) The acquisition would be in the best interest of the present and future policyholders of the former mutual without regard to any interest of policyholders as shareholders of the former mutual or any parent company.
- (2001-223, s. 9.6; 2015-146, s. 1.12; 2015-281, s. 13.)